

July 29, 2014

The Honorable Robert P. Young, Jr., Chief Justice
and Justices of the Michigan Supreme Court
Office of Administrative Counsel
PO Box 30052
Lansing, MI 48909
Submitted by email to ADMcomment@courts.mi.gov

Re: Comments to the Michigan Supreme Court Concerning the
Recommendations of the Task Force on the Role of the State Bar of Michigan

Dear Chief Justice Young and Justices of the Michigan Supreme Court:

I address the issue from a dual perspective. I served in legal counsel positions with the Michigan Legislature for 45 years prior to my retirement at the end of 2012 and for decades worked with various Section representatives on legislative issues. I have also served on several State Bar Committees pre-Keller and currently serve on the Criminal Jurisprudence and Practice Committee post-Keller. In regard to the latter, I am fully aware of Keller-permissible reviews for every item we take up and we concluded that some agenda items were not Keller-permissible. I have been an elected member of the Council of the Administrative Law Section and the Council of the Criminal Law Section, having served multiple terms on each and as Chair of each. I understand the value and limitations of the State Bar, its committees, and voluntary Sections.

First, I endorse the comments submitted by Mr. Edward L. Haroutunian (July 9, 2014). He says more eloquently what I would like to convey. I do have one exception. While I concur that a Keller oversight committee is not necessary – reminding me of the grounds against the King in the Declaration of Independence about “the sole purpose of fatiguing them into compliance with his measures” – I disagree that a super-majority of 75% should be the standard.

I would underscore Mr. Haroutunian’s comment that Sections of the State Bar should not be required to adopt “assumed names” or form separate entities to advocate public policy positions. During my tenure as a legal counsel and policy advisor for the House Republican Policy Office (retiring after the 2011-12 Session) in the post-Keller era and as an interested citizen during the past year and a half, I have heard countless representatives of multiple State Bar Sections testify before legislative committees in the House and in the Senate and those Section representatives in oral and written testimony have consistently stated that they spoke only for a Section and NOT for the State Bar. There was no Keller violation and no intrusion on First Amendment rights of SBM members.

I submit that the allegation that legislators “confuse” Section positions for the position of the State Bar as a whole is a red herring, conjured by those whose target is not the Sections at all but the State Bar itself. The attempt to separate Sections from the State Bar and to create fictitious entities is nothing less than a covert way to downwardly modulate the strength of their voice, if not silence them altogether. Their ability to contribute meaningfully to legislative and policy deliberations on behalf of their membership and to the benefit of the legal profession and the public would be lessened.

Is that the Supreme Court’s objective? I would hope not.

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Second, I would echo most of what former State Bar President Bruce A. Courtade submitted in his July 9, 2014, Memorandum, including his Brief Historical Overview and his comments at to Task Force Recommendations #1, #2, and #3. While Mr. Courtade seems comfortable with the Task Force Recommendation suggesting Sections should create separate entities, I share the view of Mr. Haroutunian that the suggested separation is ill-advised and would damage whatever influence voluntary Sections now have in the realm of public policy. I do not agree that Section positions should be limited to Members-only, for it is the current accessibility to those positions that makes Section positions part of the broader debate on issues. At the very least, that is a decision for each Section to make. Certain committee and Section business is now limited to Members only by password. Current practice is not broken and does not need fixing.

I would also disagree on one other view expressed by Mr. Courtade. I believe the Executive Director should be appointed by and responsible to the State Bar Board of Commissioners, not directly responsible to or subject to the veto of the Supreme Court. The State Bar should be no more subservient to the Supreme Court than the Judicial Tenure Commission. It is not a dependent appendage as SCAO is.

Third, let's get to the crux of the matter. As Mr. Courtade notes, this matter about review of the State Bar and Keller began when the State Bar had the audacity to question undisclosed campaign contributions in judicial races – a view shared widely in the legal community and in the public domain, with bipartisan discomfort over them. What Mr. Courtade does not mention is that the first salvo was SB 652, to restructure the Court of Claims, that led to the immediate transfer of a claim involving “dark money” from the Ingham Circuit Court to an adjunct of the Court of Appeals. I was the first and only person who testified against that bill when it was scheduled on short notice before the Senate Judiciary Committee last November. State Bar Sections shortly weighed in to oppose it while the State Bar was unable to do so because of its 14-day notice rule. (SB 652 was expedited so the State Bar could not weigh in on a *court* issue.)

It should be noted that the Court to which this letter is addressed remained silent in the face of that direct assault upon the court system and judicial decision-making. I commend the choices the Court appointed to the 4 positions, but that could be viewed as a bandaid on the wound – it covers but does not heal the wound. The instant matter is driven by the same political forces, mostly unidentified, that spurred SB 652 and later SB 661 to reign in judicial and administrative challenges to unidentified campaign contributions in partisan and judicial elections – including your elections.

The current effort to muzzle, intimidate, or dismember the State Bar is driven by those with ulterior motives to influence and control, through campaign contributions with undisclosed donors, both overtly partisan elections and state and local non-partisan judicial elections. The State Bar spoke only to judicial elections to preserve court integrity, not to the broader issue.

In conclusion, the Task Force Recommendations exceed what Keller requires to protect the First Amendment rights of State Bar members and impede the First Amendment rights of the members of voluntary Sections. If the State Bar is the vine and the Sections are the branches, the Sections won't grow or survive if cut off from the vine and the vine won't be of much use if it is torn up by its roots. May the Court preserve the vine and its branches.

Respectfully,

/s/ Bruce A. Timmons

Bruce A. Timmons

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